

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TRISTON SPEARS,

Plaintiff,

v.

ROGER BROWN, *et al.*,

Defendants.

CASE NO. C17-0787-JCC

ORDER

This matter comes before the Court on Defendants' motion to dismiss (Dkt. No. 15). Having thoroughly considered the briefing and the relevant record, the Court hereby GRANTS the motion for the reasons explained herein.

**I. BACKGROUND**

Plaintiff Triston Spears ("Spears") brought suit against several employees of the King County Department of Adult Detention ("Defendants") for allegedly assaulting him during a pat-down search while Spears was detained in the King County Work Release Program. (*See* Dkt. No. 1 at 1–2.) Spears brought claims under 42 U.S.C. § 1983 and 42 U.S.C. § 15061 (Prison Rape Elimination Act ("PREA")).

Three weeks after filing his complaint, Spears' attorney moved to withdraw as counsel. (Dkt. No. 5.) The Court granted the motion to withdraw, and Spears has since proceeded *pro se*. (Dkt. No. 7.) On September, 21 2017, the Court denied Defendants' motion to dismiss for lack of

1 service pursuant to Federal Rule of Civil Procedure 4(m), and granted Spears 30 days to perfect  
2 service on Defendants. (Dkt. No. 13 at 3.) Defendants renewed their motion to dismiss on  
3 October 27, 2017, asserting that Spears had still failed to serve them with his complaint. (Dkt.  
4 No. 15 at 5.) Plaintiff has not filed a response to either of Defendant's motions to dismiss.

## 5 **II. DISCUSSION**

6 Defendants must generally be served within 90 days of the complaint being filed. Fed. R.  
7 Civ. P. 4(m). If a defendant is not served within 90 days, the Court must either dismiss the action  
8 without prejudice or order that service be completed within a specified time. *Id.* District courts  
9 have broad discretion to extend time for service under Rule 4(m). *Efaw v. Williams*, 473 F.3d  
10 1038, 1041 (9th Cir. 2007).

11 Spears' complaint was filed on May 19, 2017. (Dkt. No. 1.) Spears needed to serve  
12 Defendants with his complaint by August 17, 2017 to meet Rule 4(m)'s 90-day deadline. The  
13 Court previously granted Spears a 30-day extension to perfect service because it was sympathetic  
14 to his status as a *pro se* litigant whose attorney had withdrawn after filing the complaint. (Dkt.  
15 No. 13 at 3.) The Court finds, however, that another extension is not appropriate. Spears has  
16 neither responded to Defendants' motions nor sought an extension to perfect service. Defendants  
17 are entitled to dismissal of Spears' claims without prejudice. Fed. R. Civ. P. 4(m).

## 18 **III. CONCLUSION**

19 For these reasons, Defendants' motion to dismiss (Dkt. No. 15) is GRANTED. Plaintiff's  
20 claims are DISMISSED without prejudice. The Clerk is DIRECTED to close this case.

21 DATED this 11th day of December, 2017.

22  
23  
24 

25 John C. Coughenour  
26 UNITED STATES DISTRICT JUDGE